MALAYAN BANKING BERHAD

v.

DOMINIC DAUNG AK. SABA @ DOMINIC DAUNG AK. SABAH

HIGH COURT, KUCHING
DATO' HAJI ABDUL KADIR BIN SULAIMAN J.
[ORIGINATING SUMMONS NO KG. 230 OF 1990]
15 FEBRUARY 1994

PRACTICE & PROCEDURE: Application to intervene - Consideration of O. 15 r. 6 RHC - Whether there was any cause or matter pending in Court between the existing plaintiff and defendant to enable applicant to intervene - Applicant purchaser of land in a judicial sale - Plaintiff obtained order confirming sale, distribution of proceeds of sale and execution of memorandum of transfer to applicant - Applicant absent when order made - Memorandum of transfer rejected by Registrar of Land Kuching - Premium outstanding to government - Whether decision of Registrar of Land Kuching wrong in law - Consideration of ss. 122, 148(2)(c), 151 & 153 of the Sarawak Land Code.

WORDS & PHRASES: Order 15 r. 6 RHC - "cause or matter" - "may exist a question or issue".

The applicant purchased the defendant's land in a judicial sale pursuant to s. 148(2)(c) of the Sarawak Land Code (the Code). The proceeds of sale was deposited into Court. By Court order dated 18 March 1993 the Court confirmed the sale, ordered distribution of the proceeds of sale and directed the Registrar of the High Court Kuching to execute a registrable memorandum of transfer free from all encumbrances in favour of the applicant, which order was duly complied with. The applicant then presented the memorandum of transfer for registration at the land office but the same was rejected by the Registrar of Land Kuching on the ground that there was premium outstanding to the government.

In his application to intervene the applicant contended that if any premium was due to the government, it should have been paid out of the proceeds prior to distribution. He contended that the proceeds had been wrongfully distributed and prayed for a refund which would be utilised toward payment of the outstanding premiums.

Held:

[1] Order 15 r. 6 of the Rules of the High Court 1980 (RHC) allows, subject to certain principles, for the intervention of persons not parties to the action. Such application may be made at any stage of the proceedings in any cause or matter then pending in Court between the parties to the cause or matter. The words "cause or matter" in the rule means the action as it stands between the existing parties i.e. between the existing plaintiff and defendant. The rationale behind allowing persons not parties to intervene is to prevent multiplicity of actions and to enable the Court to determine disputes between all the parties to them in one action, and to prevent the same or substantially the same questions or issues being tried twice with possibly different results. The words "may exist a question or issue" in r. 6(2)(b)(ii) relates to an existing question or issue between the existing parties.

[2] Though the order of 18 March 1993 was made in the absence of the applicant, his absence was because he never bothered to attend though properly served with the summons. To date there had been no appeal against the order nor an application to have the order set aside by the parties to the proceedings including the applicant. As far as the Court was concerned, the cause or matter had come to an end by the making of the order. What was left was the purely administrative act of the Registrar of Land to effect the transfer of the land from the defendant to the applicant, in accordance with law. If the applicant was dissatisfied with the action of the Registrar of Land Kuching, the remedy lay elsewhere and not to the Court to reopen the matter. As far as the Court was concerned there was nothing left for the Court to do in regard to the process of the judicial sale of the land.

[3] Such nature of complaint could not form the basis for an application under O. 15 r. 6 of the RHC when there was no cause or matter presently pending in Court to enable the Court to exercise its discretion to make an order for the applicant to be joined as a party. The application so made was therefore misconceived.

[Application dismissed with costs to the plaintiff and defendant, to be taxed unless agreed].

Cases referred to:

Amon v. Raphael Tuck & Sons Ltd [1956] 1 qB 357 ***(refd)***

Spelling Golberg Productions Inc. v. BPC Publishing Ltd [1981] RPC 2380, CA ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 15 r. 6(2)
Sarawak Land Code, ss. 122, 148(2) (c), 151, 153

For the intended intervener / applicant - Jonathan Chong; M/s Tang & Tang, Wahap & Ngumbang
For the plaintiff - Hardip Singh; M/s. Sulong Matjeraie & Co.
For the defendant - Anthony Tai; M/s. Anthony Tai

JUDGMENT

Haji Abdul Kadir bin Sulaiman J:
This is an application by Chong Teck Seng, a purchaser of the defendant's land in a judicial sale pursuant to s. 148(2)(c) of the Sarawak Land Code (hereinafter referred to as "the Code") at the instance of the plaintiff. The order for sale was contained in a Court order dated 2 May 1991. The proceeds of the sale was deposited in Court and by a Court order dated 18 March 1993 the Court confirmed the sale, ordered the paying out of the proceeds of sale, and directed the Registrar or the Senior Assistant Registrar of the High Court Kuching to execute a registrable memorandum of transfer free from all encumbrances of the said property in favour of the applicant purchaser. The Registrar of the High Court accordingly complied with the order of the Court on 20 August 1993.

On 16 December 1993 the applicant filed this application pursuant to O. 15 r. 6(2) of the Rules of the High Court 1980 (hereinafter referred to as "the RHC") for the following orders:

(a) that he be given leave to intervene;
(b) that the Registrar of Land Kuching be joined as a defendant;
(c) that the Registrar be directed to forthwith register the land free from encumbrances including those implied conditions and obligations affecting land under s. 32 of the Code;
(d) that the plaintiff and defendant each do refund a certain sum of money to Court; and
(e) that the Court do pay the sums refunded by the plaintiff and the defendant, to the Registrar of Land.

Order 15 r. 6 of the RHC allows, subject to certain principles, for the intervention of persons not parties to the action. Such application may be made at any stage of the proceedings in any cause or matter then pending in Court between the parties to the cause or matter. The words "cause or matter" in the rule mean the action as it stands between the existing parties, i.e. between the existing plaintiff and defendant: *Amon v. Raphael Tuck & Sons Ltd*. [1956] 1 QB 357. The rationale behind allowing persons not parties to intervene is to prevent multiplicity of actions and to enable the Court to determine disputes between all parties to them in one action, and to prevent the same or substantially the same questions or issues being tried twice with possibly different results. The words in r. 6(2)(b)(ii) "may exist a question or issue" relate to an existing question or issue between the existing parties: *Spelling Golberg Productions Inc. v. B.P.C. Publishing Ltd* [1981] RPC 2380, C.A. So, the immediate question that comes to mind in relation to applications of this nature is whether there is any cause or matter pending in Court between the existing plaintiff and the existing defendant to enable the applicant to seek the aid of this Order of the RHC to apply to be allowed to intervene in the said pending cause or matter. If there is no pending cause or matter before the Court between the existing parties then the application is not properly made pursuant to the rule, because the operative words in O.15 r. 6(2) is "at any stage of the proceedings in any cause or matter". If there is no cause or matter pending between the existing parties, the proper course for the intended intervener is to institute whatever action necessary against any of the parties involved in the previous concluded cause or matter for the Court cannot re-open the cause or matter already adjudicated upon as between the previous parties.

This application of the applicant is supported by an affidavit affirmed by him on 15 December 1993. From the affidavit it is disclosed that the applicant submitted to the Land Registry the memorandum of transfer executed by the Registrar of the High Court Kuching for registration. However, the Registrar of Land Kuching rejected the said memorandum on the ground that there was still RM18,202 of premium outstanding owed by the defendant to the Government and by s. 122 of the Code, the premium outstanding must first be paid before any registration can

take place. The applicant contends that the decision of the Registrar to reject the said memorandum of transfer was wrong in law. He placed reliance on s. 153 of the Code for saying so, in that he was a purchaser in good faith and for valuable consideration. He further contends that if any premium is due to the Government, it should have been included in the application for distribution of the proceeds of sale pursuant to s. 151 of the Code and be paid out of the proceeds prior to any payment ordered by Court in the proceedings for the order for distribution. If this was done the plaintiff would not have been paid the amount of RM29,416.66 as ordered and there would not be any balance payable to the defendant as ordered. Consequent upon the order so made, it is the contention of the applicant that the plaintiff had been overpaid by RM13,408.69 and the defendant had been wrongly paid by RM4,793.31, and for that reason the applicant prays for the refund of the sums paid in excess to the plaintiff and wrongly paid to the defendant be ordered to be refunded to the Court to be utilised for the payment of the premium claimed by the Registrar of Land. Thus in essence, the applicant is dissatisfied that as a purchaser of the subject land, he could not get the title to it because the Registrar of Land refused to register the memorandum of transfer of the said land as premium for the land had not been fully settled. To have the premium paid he would like the plaintiff and the defendant to do that for him from their shares in the proceeds of sale which was based on the order of the Court made thereto.

This process of judicial sale was commenced by the plaintiff in exercise of its statutory rights given by s. 148(2)(c) of the Code. The land was sold to the applicant as the purchaser at the auction sale conducted by the Court and the proceeds of sale was accordingly deposited in Court. Then the plaintiff applied by a summons in chambers for the confirmation of the auction sale, distribution of the proceeds of sale and the execution of the memorandum of transfer transferring the land to the applicant as purchaser. This summons of the plaintiff was served on the applicant as a purchaser. Though it was served on him through his solicitors, Messrs Tang & Tang, Wahap & Ngumbang Advocates, neither the counsel nor the applicant appeared on the summons. The learned Counsel for the applicant says that no appearance was made because to the applicant the land was sold to him as a purchaser free from encumbrance. However now the land premium has become an encumbrance. If that is the contention, then the proper thing for the applicant to do was to apply to the Court to have the order set aside. But he never did. Instead he applies to intervene under the provision of O.15 r.6 of the RHC. That order of the Court unless set aside by appropriate procedure is a valid order. On 18 March 1993 the Court made an order in terms of the prayers in the summons of the plaintiff, which includes an order for the Registrar or the Senior Assistant Registrar of the High Court, Kuching to execute a registrable memorandum of transfer in respect of the land free from all encumbrances in favour of the applicant. Though the order was made in the absence of the applicant, but his absence was because he never bothered to attend though properly served with the summons. To date there was no appeal against the order or no application made to have the order set aside by the parties to the proceedings, including the applicant. The present application of the applicant is not one asking the court to set aside the said order. So as far as the Court is concerned, the cause or matter had come to an end by the making of the order. What is left is purely the administrative act of the Registrar of Land to effect the transfer of the land from the defendant to the applicant, in accordance with law. If the applicant is dissatisfied with the administrative act of the Registrar of Land Kuching, the remedy lies elsewhere and not by praying to the Court to re-open the matter. As far as the Court is concerned there is nothing left for the Court to do in regard to the process of the judicial sale of the land which can be considered as pending in the cause or matter, if the process of exercising the statutory rights given by s. 148(2)(a) of the Code could be considered as a cause or matter. In his submission before me in the hearing of this application, the learned Counsel for the applicant says that the applicant as a purchaser is applying to intervene because he cannot get his land registered. To air his grievances, the applicant chose to apply to intervene pursuant to O. 15 r. 6 of the RHC. I would consider that such a nature of complain cannot form the basis for the application under O. 15 r. 6 of the RHC when there is no cause or matter

presently pending in Court to enable the Court to exercise its discretion to make an order for the applicant to be joined as a party. The application so made is, therefore, misconceived. In the circumstances, the application is dismissed with costs to the plaintiff and the defendant, to be taxed unless agreed.

MOHD NADIR BIN A. SYED AHAMED & 13 ORS.

v.

ZUBAIDI B. ABDUL HAMID & 2 ORS.

HIGH COURT, ALOR SETAR
DATO' K.C. VOHRAH J.
[ORIGINATING MOTION NO. 25-03-1992]
7 MARCH 1994

LAND LAW: Section 418 National Land Code - Appeal to Court by persons aggrieved by decision of Land Administrator - Time to file appeal - Extension - Whether High Court had power to extend time - National Land Code 1965 ss. 418, 447 - Rules of the High Court 1980, O. 3 r. 5, O. 55 r. 13.

JURISDICTION: High Court - Jurisdiction to enlarge time frame prescribed in statutes - Whether power to extend time expressly provided by statutes - Courts of Judicature Act 1964 s. 25 - Courts Ordinance 1948 s. 47.

WORDS AND PHRASES: "jurisdiction" - Section 47, Courts Ordinance 1948 - "rules of Court" - Section 447 National Land Code 1965.

The applicants here were aggrieved with a certain decision of the Land Administrator, District of Langkawi,and subsequently filed an appeal in the High Court against the said decision pursuant to s. 418 National Land Code 1965 (NLC). The facts showed that contrary to the provision of s. 418, which provided the filing of such appeal to be made within three months of the communication of the decision appealed against, the appeal was filed three months and one day after the decision had been communicated to the applicants. The applicants applied for an extension of time by one day so as to validate the appeal and the question that arose was whether the High Court had the power to grant the extension sought for.

Held:

[1] There can be no ambiguity whatsoever that by item 8 of the Schedule referred to in s. 25(2) Courts of Judicature Act 1964, the High Court has the power to apply the laws as to limitation in the manner prescribed by any written law for doing any act or taking any proceeding and this would include the power to extend time, provided that specific provision for allowing it to be done is expressed in such law. However, since s. 418 itself does not confer any power in the High Court to extend the time prescribed in the